

FIRST REGULAR SESSION

SENATE BILL NO. 331

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

Read 1st time February 9, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

0323S.011

AN ACT

To repeal sections 454.507, 454.512, and 454.515, RSMo, and to enact in lieu thereof three new sections relating to child support.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 454.507, 454.512, and 454.515, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 454.507, 454.512, and 454.515, to read as follows:

454.507. 1. In addition to the authority of the division to request information pursuant to section 454.440, the division may request information from financial institutions pursuant to this section.

2. As used in this section:

(1) "Account" includes a demand deposit, checking or negotiable withdrawal order account, savings account, time deposit account or money market mutual fund account;

(2) "Encumbered assets", the noncustodial parent's interest in an account which is encumbered by a lien arising by operation of law or otherwise;

(3) "Financial institution" includes:

(a) A depository institution as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(c));

(b) An institution affiliated party as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(u));

(c) Any federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Section 1752), including an institution affiliated party of such a credit union as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Section 1786(r)); or

(d) Any benefit association, insurance company, safe deposit company, money market

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

fund or similar entity authorized to do business in the state.

3. The division shall enter into agreements with financial institutions to develop and operate a data match system which uses automated exchanges to the maximum extent feasible. Such agreements shall require the financial institution to provide to the division, for each calendar quarter, the name, record address, Social Security number or other taxpayer identification number, and other identifying information of each noncustodial parent who maintains an account at such institution and who owes past due support, as identified by the division by name and Social Security number or other taxpayer identification number. The financial institution shall only provide such information stated in this subsection that is readily available through existing data systems, and as such data systems are enhanced, solely at the financial institution's discretion and for its business purposes, the financial institution shall provide any original and additional information which becomes readily available for any new data match request.

4. The division shall pay a reasonable fee to the financial institution for conducting the data match pursuant to this section, but such amount shall not exceed the costs incurred by the financial institution.

5. The division or a IV-D agency may issue liens against any account in a financial institution and may release such liens. **If a non-custodial parent is more than fifteen days in arrears of child support, then the financial institution shall place a hold on their account. The hold placed on the non-custodial parent's account shall prevent the non-custodial parent from purchasing real or personal property and from starting a business.**

6. (1) If a notice of lien is received from the division or a IV-D agency, the financial institution shall immediately encumber the assets held by such institution on behalf of any noncustodial parent who is subject to such lien. However, if the account is in the name of a noncustodial parent and such parent's spouse or parent, the financial institution at its discretion may not encumber the assets and when it elects not to encumber such assets, shall so notify the division or IV-D agency. The amount of assets to be encumbered shall be stated in the notice and shall not exceed the amount of unpaid support due at the time of issuance. The financial institution shall, within ten business days of receipt of a notice of lien, notify the division or IV-D agency of the financial institution's response to the notice of lien.

(2) Within ten business days of notification by the financial institution that assets have been encumbered, the division or IV-D agency shall notify by mail the noncustodial parent of the issuance of the lien and the reasons for such issuance. The notice shall advise the noncustodial parent of the procedures to contest such lien pursuant to section 454.475 by requesting a hearing within thirty days from the date the notice was mailed by the division to the noncustodial parent.

7. (1) Except as provided in subsection 6 of this section, the interest of the noncustodial parent shall be presumed equal to all other joint owners, unless at least one of the joint owners provides the division or IV-D agency with a true copy of a written agreement entered prior to the date of issuance of notice of lien, or other clear and convincing evidence regarding the various ownership interests of the joint owners within twenty days of the financial institution's mailing of the notice of lien. The financial institution shall only encumber the amount presumed to belong to the noncustodial parent. The division or IV-D agency may proceed to issue an order for the amount in the account presumed to belong to the noncustodial parent if no prior written agreement or other evidence is provided.

(2) If a prior written agreement or other clear and convincing evidence is furnished to the division, and based on such agreement or evidence the division or IV-D agency determines that the interest of the noncustodial parent is less than the presumed amount, the division or IV-D agency shall amend the lien to reflect the amount in the account belonging to the noncustodial parent or shall release the lien if the noncustodial parent has no interest in the account. In no event shall the division or IV-D agency obtain more than the presumed amount of the account without a judicial determination that a greater amount of the account belongs to the noncustodial parent. The division or IV-D agency may by levy and execution on a judgment in a court of competent jurisdiction seek to obtain an amount greater than the amount presumed to belong to the noncustodial parent upon proof that the noncustodial parent's interest is greater than the amount presumed pursuant to this subsection.

(3) For purposes of this subsection, accounts are not joint accounts when the noncustodial parent has no legal right to the funds, but is either a contingent owner or agent. Such nonjoint accounts shall include, but are not limited to, a pay-on-death account or any other account in which the noncustodial parent owner may act as agent by a power of attorney or otherwise. Furthermore, when any account naming the noncustodial parent has not been disclosed to the noncustodial parent which is evidenced by a signature card or other deposit agreement not containing the signature of such noncustodial parent, then for the purposes of this subsection, such account shall not be treated as a joint account.

(4) Notwithstanding any other provision of this section, a financial institution shall not encumber any account of less than one hundred dollars.

8. Upon service of an order to surrender issued pursuant to this section, any financial institution in possession of a jointly owned account may interplead such property as otherwise provided by law.

9. Any other joint owner may petition a court of competent jurisdiction for a determination that the interests of the joint owners are disproportionate. The party filing the petition shall have the burden of proof on such a claim. If subject to the jurisdiction of the court, all persons owning affected accounts with a noncustodial parent shall be made

parties to any proceeding to determine the respective interests of the joint owners. The court shall enter an appropriate order determining the various interests of each of the joint owners and authorizing payment against the obligor's share for satisfaction of the child support or maintenance obligation.

10. The court may assess costs and reasonable attorney's fees against the noncustodial parent if the court determines that the noncustodial parent has an interest in the affected joint account.

11. The division may order the financial institution to surrender all or part of the encumbered assets. The order shall not issue until sixty days after the notice of lien is sent to the financial institution. The financial institution shall, within seven days of receipt of the order, pay the encumbered amount as directed in the order to surrender.

12. A financial institution shall not be liable pursuant to any state or federal law, including 42 U.S.C. Section 669A, to any person for:

(1) Any disclosure of information to the division pursuant to this section;

(2) Encumbering or surrendering any assets held by the financial institution in response to a lien or order pursuant to this section and notwithstanding any other provisions in this section to the contrary, encumbering or surrendering assets from any account in the financial institution connected in any way to the noncustodial parent; or

(3) Any other action taken in good faith to comply with the requirements of this section.

13. A financial institution that fails without due cause to comply with a notice of lien or order to surrender issued pursuant to this section shall be liable for the amount of the encumbered assets and the division may bring an action against the financial institution in circuit court for such amount. For purposes of this subsection, "due cause" shall include, but not be limited to, when a financial institution demonstrates to a court of competent jurisdiction that the institution established in good faith a routine to comply with the requirements of this section and that one or more transactions to enforce the lien or order to surrender were not completed due to an accidental error, a misplaced computer entry, or other accidental human or mechanical problems.

454.512. 1. The division shall [periodically] report the name of any noncustodial parent who is **more than fifteen days** delinquent in the payment of support and the amount of overdue support owed by such parent to consumer reporting agencies defined in 15 U.S.C. Section 1681a(f).

2. The noncustodial parent shall be provided notice and a reasonable opportunity to contest the accuracy of the information before such information is reported to a consumer reporting agency under procedures adopted by the division.

3. Before referring information to any entity pursuant to this section, the division shall ensure that such entity has provided evidence that is qualified as a consumer reporting

agency.

454.515. 1. A judgment or order for child support or maintenance payable in periodic installments shall not be a lien on the real estate of the person against whom the judgment or order is rendered until the person entitled to receive payments pursuant to the judgment or order, the division or IV-D agency files a lien and the lien is recorded in the office of the circuit clerk of any county in this state in which such real estate is situated in the manner provided for by the supreme court and chapter 511, RSMo. Thereafter, the judgment shall become a lien on all real property of the obligor in such county, owned by the obligor at the time, or which the obligor may acquire afterwards and before the lien expires.

2. Liens pursuant to this section shall commence on the day filed and shall continue for a period of three years. A judgment creditor, the division or IV-D agency may revive a lien by filing another lien on or before each three-year anniversary of the original judgment. At the time each lien is revived, all unpaid installments shall remain a lien for the subsequent three-year period.

3. The lien shall state the name, last known address of the obligor, the obligor's Social Security number, the obligor's date of birth, if known, and the amount of support or maintenance due and unpaid.

4. A copy of the lien shall be mailed by the person entitled to receive payments under the judgment or order, the division or IV-D agency to the last known address of the obligor.

5. The person entitled to receive payments pursuant to the judgment or order, the division or IV-D agency may execute a partial or total release of the liens created by this section, either generally or as to specific property.

6. Notwithstanding the provisions of this section, if a non-custodial parent is fifteen days in arrears on child support payments, a lien shall automatically be filed on the non-custodial parents' real estate by the division or IV-D agency.

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